A

NUEMERA (M) SDN BHD v. MALAYSIAN COMMUNICATIONS AND MULTIMEDIA COMMISSION

HIGH COURT MALAYA, KUALA LUMPUR
ATAN MUSTAFFA YUSSOF AHMAD J
[ORIGINATING SUMMONS NO: WA-24NCC(ARB)-7-02-2023]
B 14 MARCH 2024

Abstract – *An arbitral tribunal is expressly empowered, pursuant to s. 35(1)(a) of the Arbitration Act 2005, to rectify its own final award in instances where the final award contains inadvertent errors that do not accurately reflect the tribunal's intention without altering the substance of its decision. This power extends to correcting 'any error in computation, any clerical or typographical error or other error of similar nature'. The phrase 'other error of similar nature' should be interpreted in its natural and ordinary sense, while also considering the legislative purpose and context.*

C

D

ARBITRATION: *Award – Final award – Correction – Arbitral tribunal issued final award – Arbitral tribunal later issued addendum award, correcting interest start date – Whether final award final and binding – Whether could be rectified – Whether correction made on inadvertent error – Whether correction in addendum award altered substance of decision in final award – Whether correction by arbitral tribunal amounted to varying or amending final award – Whether correction offended principle of finality of arbitral awards – Arbitration Act 2005, ss. 35 & 36*

E

F ***STATUTORY INTERPRETATION:*** *Statutes – Arbitration Act 2005, s. 35 – 'any error in computation, any clerical or typographical error or other error of similar nature' – Whether restrictive reading should be employed on phrase 'other error of similar nature' – Whether ought to be interpreted broadly – Whether statutory principles of ejusdem generis and noscitur a sociis ought to be applied*

G ***ARBITRATION:*** *Jurisdiction – Arbitral tribunal – Functus officio – Arbitral tribunal issued final award – Arbitral tribunal later issued addendum award, correcting interest start date – Whether arbitral tribunal functus officio upon issuing final award – Whether seized with jurisdiction to make correction – Arbitration Act 2005, ss. 35 & 36*

H The plaintiff and the defendant had entered into an agreement for the building, operation and management of a national public cellular blocking service ('agreement') in 2013. In 2018, the defendant suspended the plaintiff's appointment under the agreement pending investigation into potential breaches of the said agreement. The plaintiff commenced
I arbitration proceedings against the defendant, challenging the said suspension. The arbitral tribunal issued a final award, ordering the defendant to pay the plaintiff: (i) RM53.895 million for monthly charges from April

2017 to January 2018 ('pre-suspension charges') with 5% per annum interest from the notice of the arbitration date until payment; and (ii) RM59,362,500 for monthly charges from February 2018 to December 2018 ('post-suspension charges') with 5% per annum interest from the notice of arbitration date until payment ('final award'). The defendant applied for a correction of the interest order on the post-suspension charges, to start from the final award date instead. The arbitral tribunal issued an addendum award, agreeing with the defendant and correcting the interest start date on the post-suspension charges from the notice of arbitration date to the date upon which the invoices became due under the agreement ('addendum award'). In the present originating summons, the plaintiff sought to set aside the addendum award on the grounds that: (i) the final award was final and binding, pursuant to s. 36 of the Arbitration Act 2005 ('Act'), and could not be amended except as specifically provided in s. 35 of the Act. The correction amounted to varying or amending the final award, which was not permitted under s. 36 of the Act; (ii) a restrictive reading should be employed on the phrase 'other error of similar nature' in s. 35(1)(a) of the Act, based on the interpretive canons of *ejusdem generis* and *noscitur a sociis*. The phrase must be limited to errors of 'simple computation' or in 'recording an award', in line with the specific categories of computational, clerical and typographical errors that preceded it; and (iii) the arbitral tribunal was *functus officio* upon issuing the final award and, therefore, had no jurisdiction to alter the interest start date on the post-suspension charges.

Held (dismissing originating summons with costs):

(1) Section 35(1)(a) of the Act expressly empowers an arbitral tribunal to correct 'any error in computation, any clerical or typographical error or other error of similar nature' in its award. What then is the meaning and scope of 'other error of similar nature'? In the absence of any contrary definition in the Act, these words should be given their natural and ordinary meaning, with regard to the legislative purpose and context. The common thread linking computational, clerical and typographical errors is that they are all inadvertent errors that do not reflect the true intention of the tribunal. They involve the tribunal writing something different from what it meant to write. Seen in this light, the phrase 'other error of similar nature' should encompass errors that are inadvertent and do not accurately reflect the tribunal's intention without altering the substance of its decision. The arbitral tribunal's error, in awarding interest on the post-suspension charges from the notice of arbitration date instead of the date those charges became due, was an inadvertent error that fell within the scope of s. 35(1)(a) of the Act. The correction in the addendum award did not substantively change the arbitral tribunal's decision that the post-suspension charges and interest thereon were payable by the defendant. The defendant did not dispute its

liability for those charges. The correction merely aligned the interest computation with the arbitral tribunal's manifest intention to award interest from the due dates. This was precisely the type of inadvertent error that s. 35(1)(a) of the Act empowered the arbitral tribunal to correct. This conclusion did not infringe s. 36 of the Act nor offend the principle of finality of arbitral awards. The arbitral tribunal acted within the permissible scope of its statutory power under s. 35(1)(a) of the Act in issuing the addendum. (paras 39, 41, 44, 48, 49 & 51)

(2) Whilst *ejusdem generis* and *noscitur a sociis* are undoubtedly relevant principles of statutory interpretation, they could not be applied in a manner that would unduly fetter or frustrate the legislative intent behind s. 35(1)(a) of the Act. It is apparent that the categories of computational, clerical and typographical errors, pursuant to s. 35(1)(a), are expressed in broad terms, without any qualifiers to limit their scope. There is simply nothing in the natural and ordinary meaning of those words to suggest that only 'simple computational errors', for example, are envisaged. If Parliament had intended to restrict the power of correction to errors of such a narrow compass, it could easily have employed language to that effect; the fact that it did not do so was a strong indicator that such a restrictive reading was not intended. This is reinforced by the inclusion of the phrase 'or other error of similar nature' in s. 35(1)(a). The use of the disjunctive 'or' indicates that this phrase is not merely an extension of the enumerated categories, but a distinct category of its own right. The operative word was 'similar' which denotes that the nature of the error must share common features with computational, clerical and typographical errors. (paras 86-88)

(3) The *functus officio* doctrine was not an impediment to the addendum award. Section 35 of the Act carves out a narrow and specific exception to *functus officio*, empowering the tribunal to correct certain defined errors. The arbitral tribunal, in issuing the addendum award to rectify an error that it was authorised by statute to correct, acted within its proper remit and in a manner that was entirely consistent with the terms and spirit of the Act. (para 104)

Case(s) referred to:

CNA v. CNB And Another And Another Matter [2021] SGHC 192 ***(refd)***

Econ Piling Pte Ltd And Another (Both Formerly Trading As Econ-NCC Joint Venture) v. Shanghai Tunnel Engineering Co Ltd [2011] 1 SLR 246 ***(refd)***

Gannet Shipping Ltd v. Eastrade Commodities Inc [2002] 1 Lloyd's Rep 713 ***(refd)***

Kelana Erat Sdn Bhd v. Niche Properties Sdn Bhd & Another Case [2013] 4 CLJ 1172 HC ***(refd)***

Lembaga Kumpulan Wang Simpanan Pekerja v. Arulananda K Manickam [2018] 1 CLJ 88 HC ***(refd)***

Obrascon Huarte Lain SA v. Qatar Foundation For Education, Science And Community Development [2020] EWHC 1643 ***(refd)***

Pancaran Prima Sdn Bhd v. Iswarabena Sdn Bhd & Another Appeal [2020] 9 CLJ 466 FC ***(refd)***
Rees v. Windsor-Clive And Others [2020] EWHC 2986 ***(refd)***
Tay Eng Chuan v. United Overseas Insurance Ltd [2009] 4 SLR(R) 1043 ***(refd)***
Tenaga Nasional Bhd v. Majlis Daerah Segamat [2022] 2 CLJ 497 FC ***(refd)***

Legislation referred to:
AIAC Arbitration Rules 2018, art. 38(1)
Arbitration Act 2005, ss. 35(1)(a), (2), 36(1), (2), 37(1)(a)(v), (b)(ii), (2)(b), 39(1)(b)
Rules of Court 2012, O. 20 r. 11
UNCITRAL Model Law, art. 33(1)(a)

Arbitration Act 1996 [UK], ss. 57(3)(a), 67, 68
Arbitration Act 2001 [Sing], ss. 43(1)(a), 50(3)

For the plaintiff - Liew Teck Huat, Ong Kang Nyong & Sufiah Yussof; M/s Zaid Ibrahim Suflan TH Liew & Partners
For the defendant - Saritha Devi & Nur Ainnabila Rosdi; M/s Firoz Julian

Reported by Najib Tamby

JUDGMENT

Atan Mustaffa Yussof Ahmad J:

Introduction

[1] In the realm of arbitration, where finality is prized and the *functus officio* doctrine holds sway, can an arbitral tribunal revisit its award to correct an error in the computation of interest? This question, which pits the principle of conclusiveness against the pursuit of accuracy, lies at the heart of the present dispute between the plaintiff, Nuemera (M) Sdn Bhd, and the defendant, Malaysian Communications and Multimedia Commission. The plaintiff, having secured a favourable final award from the learned arbitral tribunal, cries foul at the subsequent issuance of an addendum award amending the date from which interest is to run, arguing that the tribunal was spent and could not thus vary its original decision. The defendant, however, maintains that the addendum award merely corrects an inadvertent computational error within the narrow confines of the arbitral tribunal's statutory power, leaving the substance of the final award intact. The resolution of this conundrum requires a delicate balancing of the need to uphold arbitral finality on the one hand, and the imperative to give effect to the true intention of the arbitral tribunal on the other, a task that this court must undertake with utmost circumspection.

Background Facts

[2] The plaintiff and the defendant entered into an agreement for the building, operation and management of a national public cellular blocking service ("PCBS agreement') on 3 May 2013.

[3] On 26 January 2018, the defendant suspended the plaintiff's appointment under the PCBS agreement pending an investigation into potential breaches of the agreement. Despite the suspension, the plaintiff issued the defendant an invoice dated 10 February 2018 for RM5,618,000 for public cellular blocking service ("PCBS") charges for February 2018. The defendant received this invoice on 23 February 2018.

[4] The plaintiff commenced arbitration proceedings against the defendant on 27 February 2018 *via* a notice of arbitration to challenge the suspension.

[5] From February 2018 to December 2018, the plaintiff continued issuing the defendant monthly invoices for PCBS charges.

[6] On 3 October 2022, the arbitral tribunal issued a final award that:

(i) declared the defendant's suspension of the plaintiff's appointment under the PCBS agreement as valid and warranted;

(ii) declared that the non-renewal of the PCBS agreement for a second five-year term was warranted.

(iii) ordered the defendant to pay the plaintiff RM53,895,000 for monthly "charges" from April 2017 to January 2018 ("pre-suspension charges") with 5% per annum interest from the notice of arbitration date until payment.

(iv) ordered the defendant to pay the plaintiff RM59,362,500 for monthly "charges" from February 2018 to December 2018 ("post-suspension charges"), with 5% per annum interest from the notice of arbitration date until payment.

(v) ordered the parties to bear their own costs.

(vi) ordered the defendant to bear 40% and the plaintiff to bear 60% of the arbitrators' additional fees estimated at RM615,000.

[7] On 31 October 2022, the defendant paid the plaintiff a total of RM125,860,070.55, comprising the pre-suspension charges, post-suspension charges, and interest on the pre-suspension charges from 27 February 2018 until payment on 31 October 2022.

[8] On 2 November 2022, the defendant applied for a correction of the interest order on the post-suspension charges to start from the final award date instead. The parties exchanged submissions on this correction application on 15 November 2022 and 23 November 2022. On 1 December 2022, the arbitral tribunal issued an addendum award agreeing with the defendant, correcting the interest start date on the post-suspension charges from the notice of arbitration date of 27 February 2018 to 1 January 2019, which is the date upon which the invoices became due under the PCBS agreement.

[9] On 20 December 2022, the defendant paid the plaintiff a further RM11,376,457.19, being the 5% per annum interest on the post-suspension charges from 1 January 2019 until payment on 31 October 2022.

The Plaintiff's Originating Summons

[10] The plaintiff filed this originating summons to set aside the addendum award dated 1 December 2022 issued by the arbitral tribunal on the grounds that the arbitral tribunal did not have the power to make the correction to the interest start date on the post-suspension charges from 27 February 2018 to 1 January 2019. In the final award dated 3 October 2022, the arbitral tribunal had ordered the defendant to pay the post-suspension charges with 5% per annum interest from 27 February 2018 until payment. The plaintiff contends this correction amounts to varying or amending the final award, which is not permitted under s. 36 of the Arbitration Act 2005 ("AA 2005"), and the addendum award should therefore be set aside.

The Law

[11] Section 36(1) of the AA 2005 enshrines the principle of the finality of arbitral awards. It provides that an award issued by an arbitral tribunal "shall be final and binding on the parties". This is a reflection of the *functus officio* doctrine, which precludes a tribunal from revisiting the merits of its decision once the final award has been made.

[12] However, s. 36(2) carves out a limited exception to finality. It states that the arbitral tribunal shall not vary, amend, correct, review, add to or revoke an award which has been made, "except as specifically provided for in s. 35."

[13] Section 36 of the AA 2005 provides:

> 36 An award is final and binding
>
> (1) An award made by an arbitral tribunal pursuant to an arbitration agreement shall be final and binding on the parties and may be relied upon by any party by way of defence, set-off or otherwise in any proceedings in any court.
>
> (2) The arbitral tribunal shall not vary, amend, correct, review, add to or revoke an award which has been made except as specifically provided for in s. 35.

[14] Section 35(1)(a), in turn, allows a party to request the arbitral tribunal "to correct in the award any error in computation, any clerical or typographical error or other error of similar nature." Pursuant to s. 35(2), if the tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request.

[15] Section 35 of the AA 2005 provides:

> 35 Correction and interpretation of award or additional award
>
> (1) A party, within thirty days of the receipt of the award, unless any other period of time has been agreed upon by the parties:
>
> *(a) upon notice to the other party, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error or other error of similar nature; or*
>
> (b) upon notice to and with the agreement of the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
>
> *(2) Where the arbitral tribunal considers the request made under subs. (1) to be justified, it shall make the correction or give the interpretation within thirty days of the receipt of the request and such interpretation shall form part of the award.*
>
> (3) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) on its own initiative within thirty days of the date of the award.
>
> (4) Unless otherwise agreed by the parties, a party may, within thirty days of the receipt of the award and upon notice to the other party, request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
>
> (5) Where the arbitral tribunal considers the request under subsection (4) to be justified, it shall make the additional award within sixty days from the receipt of such request.
>
> (6) The arbitral tribunal may, where it thinks necessary, extend the period of time within which it shall make a correction, interpretation or an additional award under this section.
>
> (7) The provisions of s. 33 shall apply to a correction or interpretation of the award or to an additional award.
>
> (emphasis added)

[16] Section 35 of the AA 2005 is modelled on art. 33 of the UNCITRAL Model Law on International Commercial Arbitration. The underlying policy is to permit the correction of inadvertent errors by the tribunal, while preserving the finality of the award on the substantive merits. This balances two important principles in arbitration: party autonomy and minimal curial intervention.

[17] Article 38 of the AIAC Arbitration Rules 2018 ("AIAC Rules"), under which the present arbitration was conducted, contains similar provisions on the correction of awards.

> Article 38 Correction of the award
>
> 1. Within 30 days after the receipt of the award, a Party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error

or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 3-4, paragraphs 2 to 6, shall apply.

[18] The courts have interpreted s. 35 and analogous provisions in arbitration legislation and rules to cover errors that are inadvertent and do not affect the substance of the tribunal's decision. This includes computational, clerical, and typographical errors, as well as errors "of a similar nature." The latter phrase has been held to encompass situations where the tribunal accidentally overlooked a fact or made an inadvertent omission: see *CNA v. CNB And Another And Another Matter* [2021] SGHC 192; *Obrascon Huarte Lain SA v. Qatar Foundation For Education, Science And Community Development* [2020] EWHC 1643; *Rees v. Windsor-Clive And Others* [2020] EWHC 2986, and *Gannet Shipping Ltd v. Eastrade Commodities Inc* [2002] 1 Lloyd's Rep 713.

[19] On the other hand, errors of law, fact or judgment do not fall within s. 35, even if made inadvertently: see *Lembaga Kumpulan Wang Simpanan Pekerja v. Arulananda K Manickam* [2018] 1 CLJ 88; [2017] 10 MLJ 461 and *Econ Piling Pte Ltd And Another (Both Formerly Trading As Econ-NCC Joint Venture) v. Shanghai Tunnel Engineering Co Ltd* [2011] 1 SLR 246.

[20] Where a party contends that the correction is beyond the scope of s. 35 and effectively constitutes a review of the tribunal's decision, the recourse is to apply to set aside the award under s. 37 of the AA 2005. The material grounds for the present case are found in s. 37(1)(a)(v), which applies where the award "contains decisions on matters beyond the scope of the submission to arbitration", and s. 37(1)(b)(ii) read with s. 37(2)(b), which applies where "a breach of the rules of natural justice occurred ... in connection with the making of the award".

[21] Section 37 of the AA 2005 provides:

Application for setting aside

(1) An award may be set aside by the High Court only if:

(a) the party making the application provides proof that:

(i) a party to the arbitration agreement was under any incapacity;

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or, failing any indication thereon, under the laws of Malaysia;

A (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present that party's case;

(iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;

B (v) **subject to subs. (3), the award contains decisions on matters beyond the scope of the submission to arbitration; or**

(vi) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Act from C which the parties cannot derogate, or, failing such agreement, was not in accordance with this Act; or

(b) the High Court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Malaysia; or

D (ii) the award is in conflict with the public policy of Malaysia.

(2) Without limiting the generality of subparagraph (1)(b)(ii), an award is in conflict with the public policy of Malaysia where:

(a) the making of the award was induced or affected by fraud or E corruption; or

(b) a breach of the rules of natural justice occurred:

(i) during the arbitral proceedings; or

(ii) in connection with the making of the award.

F (3) Where the decision on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.

(emphasis added)

G **[22]** The courts have emphasised that an award may be set aside under s. 37 only if one of the specified grounds is satisfied as held in see *Pancaran Prima Sdn Bhd v. Iswarabena Sdn Bhd & Another Appeal* [2020] 9 CLJ 466. The Federal Court held:

[141] The "very low" threshold for s. 37 as decided in *Petronas Penapisan* H and *Sigur Ros* must be understood in the context it was made, *ie*, that compared to s. 42, the threshold under s. 37 is "very low". In other words, it is "very low" relative to the threshold under s. 42. It must be remembered that the grounds enumerated in s. 37 are exhaustive and as such the court cannot set aside an award for reasons other than those that are listed.

I

[23] This underscores the policy of minimal curial intervention in arbitral awards and places the burden on the applicant to establish a recognised ground for setting aside.

[24] These, then, are the key legal principles to be applied in determining whether the addendum award should be set aside. The core issues are: (a) whether the correction in the addendum award falls within the permissible scope of s. 35 of the AA 2005 and the corresponding provisions of the AIAC Rules, and (b) whether there are any grounds under s. 37 to set aside the addendum award as constituting a decision beyond the scope of the submission to arbitration or a breach of natural justice.

The Plaintiff's Submissions

[25] The plaintiff submits that the final award is final and binding under s. 36 of the AA 2005. It cannot be amended except as specifically provided in s. 35, which only allows correction of any error in computation, any clerical or typographical error or other error of a similar nature.

[26] The plaintiff contends that s. 35 applies to situations where the recording of an award does not represent what the tribunal intended, such as incorrectly computing figures or accidentally writing something different from what was intended. It does not apply where the tribunal makes an error of judgment or mistake in law or fact.

[27] Here, the plaintiff argues that if interest was awarded from an earlier date than strictly permitted, that is at most an error of judgment in the award. The arbitral tribunal was entitled to order interest on the post-suspension charges sum from the notice of arbitration date. Whether interest should be awarded, on what amount and for what period is a matter of discretion that the arbitral tribunal exercised in its substantive decision.

[28] It is not permissible for the defendant to now seek to unravel that decision by invoking s. 35. The interest awarded was a decision made by the arbitral tribunal, not a typographical, clerical or computation error. It therefore falls outside the scope of s. 35.

[29] The plaintiff submits that once the arbitral tribunal issued the final award, it was *functus officio*. The powers under s. 35 are residual powers to correct specific errors in computation or in recording the award. They do not extend to the arbitral tribunal changing its mind on a decision made, as that would be a disguised appeal.

The Defendant's Submissions

[30] The defendant submits that s. 35 of the AA 2005 and art. 38 of the AIAC Rules expressly empower the arbitral tribunal to correct three categories of errors in the final award: (a) any error in computation; (b) any clerical or typographical error; or (c) any error or omission of a similar

nature. The defendant argues the phrase "any error or omission of a similar nature" indicates that so long as it is an error of some kind, it can be corrected.

[31] The defendant contends that the arbitral tribunal had the power to correct the starting date of the late payment interest on the post-suspension charges, as it was an inadvertent error that falls within the permitted scope of s. 35 and art. 38. The correction did not affect the arbitral tribunal's substantive decision that the plaintiff was entitled to those charges and to late payment interest.

[32] The defendant submits that the arbitral tribunal simply overlooked the fact that at the date of the notice of arbitration, the post-suspension charges were not yet due for payment under the PCBS agreement. Most of those charges did not even exist at that point. As such, awarding interest from the notice of arbitration date was an error correctable by the arbitral tribunal.

[33] The defendant argues this position is supported by case law, where courts have taken a wider interpretation of "any error or omission of a similar nature" to cover errors in the nature of inadvertent acts or omissions by the tribunal that, if corrected, do not affect the substance of what the tribunal intended to decide.

[34] The defendant contends that s. 35 of the AA 2005 and art. 38 AIAC Rules preclude any argument that the arbitral tribunal was *functus officio*, as these provisions clearly allow corrections to be made. There are no grounds to set aside the addendum award under s. 37 of the AA 2005, as the correction was not a new decision or reference to arbitration, and there was no breach of natural justice since both parties had the opportunity to submit on the issue.

Analysis And Findings

Whether The Arbitral Tribunal Exceeded Its Statutorily Prescribed Powers

[35] The overarching issue in this application is whether the arbitral tribunal acted within its statutory power under s. 35 of the AA 2005 in issuing the addendum award dated 1 December 2022 to correct an error in the computation of interest in the final award dated 3 October 2022, and if so, whether this contravenes s. 36 of the AA 2005.

[36] The plaintiff submits that the addendum award contravenes s. 36, which mandates that an arbitral award is final and binding and can only be varied, amended, corrected, reviewed, added to or revoked as permitted by s. 35. The plaintiff argues that the arbitral tribunal's correction of the interest computation is beyond the scope of s. 35, as it amounts to an impermissible review of the arbitral tribunal's decision.

[37] The defendant contends that the addendum award falls squarely within the arbitral tribunal's power under s. 35(1)(a) to "correct in the award any error in computation, any clerical or typographical error or other error of similar nature." The defendant submits that the arbitral tribunal's inadvertent error in awarding interest on the post-suspension charges from the notice of arbitration date instead of the date those charges became due is an "error of similar nature" that can be corrected under s. 35, without offending the principle of finality in s. 36. Further, the defendant points to art. 38 of the AIAC Rules as containing a similar power of correction.

[38] I have carefully considered the parties' submissions and the applicable legal provisions and case law. In my judgment, the defendant's position is correct, for the following reasons.

[39] First, s. 35(1)(a) of the AA 2005 expressly empowers an arbitral tribunal to correct "any error in computation, any clerical or typographical error or other error of similar nature" in its award. The inclusion of the words "other error of similar nature" clearly indicates that Parliament intended the categories of errors that can be corrected to extend beyond the specifically enumerated computational, clerical and typographical errors.

[40] This is reinforced by art. 38 of the AIAC Rules, which governs the present arbitration. Article 38(1) contains language virtually identical to s. 35(1)(a). When parties agree to arbitrate under institutional rules, they are taken to have consented to the procedures and powers provided therein.

[41] What then is the meaning and scope of "other error of similar nature"? In the absence of any contrary definition in the AA 2005, these words should be given their natural and ordinary meaning, with regards to the legislative purpose and context. In my view, the common thread linking computational, clerical and typographical errors is that they are all inadvertent errors that do not reflect the true intention of the tribunal. They involve the tribunal writing something different from what it meant to write. Seen in this light, the phrase "other error of similar nature" should encompass errors that are inadvertent and do not accurately reflect the tribunal's intention, without altering the substance of its decision.

[42] This interpretation is supported by case law from other Commonwealth jurisdictions with similar legislative provisions. In particular, I find highly persuasive the Singapore High Court decision of *CNA v. CNB*, which examined the scope of art. 33(1)(a) of the UNCITRAL Model Law (which is *in pari materia* with s. 35(1)(a) of the AA 2005). There, the court held at [61] that the reference to "any errors of similar nature" covers "errors in the nature of inadvertent acts or omissions by the arbitral tribunal, which if corrected, do not affect the substance of what the tribunal intended to decide.

[43] Similarly, in the English case of *Rees v. Windsor-Clive,* the High Court in England upheld a tribunal's correction of an aspect of its award that it had "overlooked and did not consider", characterising this as "an accidental slip" that could be corrected under s. 57(3)(a) of the UK Arbitration Act 1996 (which is also analogous to s. 35(1)(a) of the AA 2005).

[44] Applying these principles to the facts, I accept the defendant's submission that the arbitral tribunal's error in awarding interest on the post-suspension charges from the notice of arbitration date instead of the date those charges became due was an inadvertent error that falls within the scope of s. 35(1)(a).

[45] As explained by the arbitral tribunal in paras. 27 to 29 of the addendum award, its intention was always to award interest from the date the relevant charges became due. This is what was said:

> 27. The intention of the Arbitral Tribunal in awarding interest on the post-suspension sum in the final award was to award interest on the due date until payment the invoiced sums for the charges which were undisputed until the date of payment at 5% per annum. This intention is manifest in the award of interest on the charges amounting to RM53,895,000 that was due and payable for the pre-suspension period at the date of the notice of arbitration ("Pre-Suspension sum").
>
> The Arbitral Tribunal intended to, and did, fix the due date of the entire Pre-Suspension sum as at the date of the notice of arbitration. Neither Party has challenged the legality or propriety of the Arbitral Tribunal's award. Indeed, the Claimant has accepted the propriety of this award.
>
> 28. The Arbitral Tribunal admits that it inadvertently overlooked the fact that at the date of the notice of arbitration (*ie*, 27 February 2018), the entire post-suspension sum of RM59,362,500 (covering eleven (11) monthly Invoices from February to December 2018 was not due for payment under Clause 39 of the PCBS agreement at the date of the notice of arbitration. However, under Clause 39(13) of the PCBS agreement, a monthly charge is payable (whether or not the Respondent disputes its correctness), and accordingly, the first Invoice dated 10 February 2018 became due and payable on the date of the notice of arbitration. Accordingly, on this basis, the Arbitral Tribunal was in error in awarding interest on the subsequent ten (10) monthly charges from 10 March 2018 to 14 December 2018.
>
> 29. What happened here was that the Arbitral Tribunal overlooked and did not consider that at the date of the notice of arbitration on 27 February 2018, the post suspension sum was not due, and therefore no interest was payable on that sum from 27 February 2018. In overlooking this fact, the Arbitral Tribunal awarded interest for the period from 27 February 2018 to 31 December 2018. This was a manifest error arising from an accidental slip in overlooking this obvious fact.

[46] This is clear from how the arbitral tribunal awarded interest on the pre-suspension charges (which were all due by 27 February 2018) from that date. However, the arbitral tribunal "inadvertently overlooked" that the post-suspension charges only became due from 23 March 2018 onwards, as the first invoice was only received by the defendant on 23 February 2018, with the remaining ten invoices issued between March to December 2018.

[47] The arbitral tribunal's explanation is consistent with the general legal principle that interest is awarded to compensate a party for being kept out of money due to it. There is nothing to suggest that the arbitral tribunal intended to depart from this principle by deliberately awarding interest for periods before the post-suspension charges were due.

[48] The correction in the addendum award did not substantively change the arbitral tribunal's decision that the post-suspension charges and interest thereon were payable by the defendant. The defendant does not dispute its liability for those charges. The correction merely aligned the interest computation with the arbitral tribunal's manifest intention to award interest from the due dates. This is precisely the type of inadvertent error that s. 35(1)(a) empowers the arbitral tribunal to correct.

[49] I do not think this conclusion infringes s. 36 of the AA 2005 or offends the principle of finality of arbitral awards. Section 36(2) expressly carves out the tribunal's power of correction in s. 35 as an exception to the general prohibition against varying, reviewing or revoking an award. Parliament must be taken to have intended that a correction falling properly within the scope of s. 35 does not violate s. 36. This represents a legislative balance between the policies of finality and the need to rectify certain inadvertent errors in the award.

[50] The addendum award did not entail a wholesale reopening and review of the merits of the arbitral tribunal's decision in the final award. The narrow jurisdiction to correct was exercised to give effect to the arbitral tribunal's intention by aligning the interest computation with the undisputed facts, without altering the substance of its ruling that the post-suspension charges and interest were due to the plaintiff. In these circumstances, upholding the addendum award does not undermine the finality of the final award.

[51] For these reasons, I find that the arbitral tribunal acted within the permissible scope of its statutory power under s. 35(1)(a) of the AA 2005 in issuing the addendum award to correct an inadvertent error in the interest computation in the final award. This does not contravene s. 36 and is supported by the language of art. 38 of the AIAC Rules, as well as persuasive judicial authority interpreting similar provisions in other jurisdictions.

[52] The plaintiff and defendant referred to a number of cases to support their respective arguments: *Obrascon Huarte Lain SA*; *Rees v. Windsor-Clive And Others* [2020] EWHC 2986; *CNA v. CNB* and *Tay Eng Chuan v. United Overseas Insurance Ltd* [2009] 4 SLR(R) 1043. The court will address these cases in more detail.

[53] In *Obrascon*, JV contractors challenged an addendum award issued by an International Chamber of Commerce (ICC) arbitration tribunal that made changes to the tribunal's fourth partial award related to a construction dispute with the Qatar Foundation. The key issue was whether the tribunal had jurisdiction to make those changes under art. 35 of the ICC Rules or had exceeded its powers. The court decided that the contractors' challenges under ss. 67 (substantive jurisdiction) and 68 (serious irregularity) of the Arbitration Act 1996 should be dismissed, finding that the challenge did not properly fall under s. 67 and that under s. 68 the tribunal had not exceeded its powers, and even if it had, this did not cause substantial injustice to the contractors.

[54] The court in *Obrascon* elucidated the latitude inherent in art. 35 of the ICC Rules, analogous to s. 35 of the AA 2005, which empowers the tribunal to correct mistakes of a character akin to 'clerical, computational or typographical errors.' The jurisprudential guidance from *Obrascon* underscores a nuanced interpretation of such correctional powers. It is discerned that the scope of 'errors of a similar nature' encompasses a breadth of discretion that extends beyond mere clerical and computational oversights. This acknowledges the inherent complexity in the adjudicative process and avoids an overly restrictive application that could undermine the arbitral tribunal's capacity to rectify its intended meaning when it has not been properly conveyed in the award.

[55] The essence of the *Obrascon* ruling lies not in the latitude of interpretation for correction but in the recognition of the arbitral tribunal's margin of appreciation. The High Court's stance was that the arbitral tribunal's amendments were indeed broader than clerical errors but fell within the purview of 'similar nature' errors as they addressed matters inadvertently omitted from consideration. These modifications served to align the award with the arbitral tribunal's original intention, thus upholding the substantive justice over procedural inflexibility.

[56] Applying this rationale to the case at hand, it becomes pertinent to determine whether the arbitration tribunal's addendum award falls within the ambit of correcting an error of 'similar nature'. The change from "the date of the notice of arbitration" to "from 1 January 2019" for the interest calculation may appear substantive but is, in fact, a re-alignment of the award to reflect the accurate computation period as intended by the arbitration tribunal. Such a correction can reasonably be seen as within the sphere of authority vested in the arbitration tribunal to ensure that the award faithfully represents its adjudicatory will.

[57] The plaintiff's argument, which is reminiscent of the contention addressed in *Obrascon*, relies on a narrow interpretation of the arbitration tribunal's correctional power that could arguably lead to a miscarriage of justice due to an overly technical construal of the AA 2005. In a judicial system, where the quest for justice is paramount, such an interpretation is neither reasonable nor desirable.

[58] In the case of *Rees v. Windsor-Clive*, a tenant challenged an arbitration award upholding the validity of three notices to quit served by his landlords under the Agricultural Holdings Act 1986. The key issues were whether the land was required for the relevant use within a relatively short time after the expiry of the notices, whether "building development" encompassed development without buildings, and whether the arbitrator made procedural errors. The High Court in Wales decided that the arbitrator had not erred in law or made serious procedural irregularities, and dismissed the tenant's appeal to set aside the arbitration award.

[59] This case provides a pertinent illustration where the court recognised the legitimacy of correcting an award where the arbitrator had inadvertently overlooked a crucial aspect of the evidence, thereby misapplying it to only a part of the land in question. Upon realising this oversight, the arbitrator issued a corrected award. The court distinguished this from an impermissible review of the decision, acknowledging the arbitrator's correction as an effort to reflect the true intent of the original award, rather than to reassess the merits of the case. This action was upheld as falling within the remit of the arbitrator's powers to correct accidental slips or omissions.

[60] The present case, in essence, aligns with the principles established in *Rees*. The arbitral tribunal, having identified an error in the date from which interest should run, corrected this error without delving into a reassessment of the merits of the case. The adjustment of the date for interest calculation from the date of the notice of arbitration to a specific date following the charges period can be regarded as an accidental slip or an omission of the kind contemplated by the law, analogous to a clerical or typographical error that does not implicate the arbitration tribunal's thought process or decision-making.

[61] The plaintiff's contention that this correction exceeds the arbitration tribunal's authority and that the decision in *Rees* should not be applicable in the Malaysian context because it allegedly permits arbitrators to reconsider awards is not persuasive. The correction in question does not pertain to the arbitration tribunal's judgment on the substantive issues of the dispute but rather to the rectification of a demonstrable oversight in the implementation of that judgment.

[62] In light of the foregoing, it would be an overly restrictive interpretation of the law to prohibit such corrections, which serve to give effect to the clear intent of the arbitral tribunal as reflected in its final award. To hold otherwise would be to prefer form over substance and undermine the practical administration of justice.

[63] Furthermore, the plaintiff's concern that this interpretation allows arbitral tribunals a "get out of jail free card" is unfounded. The safeguards within the AA 2005 and the AIAC Rules, alongside the court's supervisory jurisdiction, are sufficient to prevent the abuse of the correction process. This interpretation does not grant *carte blanche* to arbitral tribunals to revisit their decisions, but rather ensures that their awards are free from clerical, typographical mistakes and errors of a similar nature which could unduly prejudice the parties.

[64] In the case of *CNA v. CNB*, CND and CNE filed applications in the Singapore High Court to set aside a partial arbitral award where the tribunal erred by granting a remedy not sought by the parties: it granted an order for CNA to account for profits, even though CNB and CNC had expressly abandoned that claim against CNA during the oral closing submissions. The court held that such an error was deemed correctable because it was inadvertent and did not alter the substance of the tribunal's intended decision. The decision articulates that an arbitral tribunal's correction power extends to inadvertent errors that, if remedied, do not affect the substance of the tribunal's decision. This principle is directly applicable to the instant matter; the arbitral tribunal's correction regarding the interest commencement date is analogous to the inadvertent errors contemplated by the *CNA v. CNB* judgment.

[65] Furthermore, the correction does not alter the substance of the final award but rather rectifies an oversight regarding the factual date upon which the invoices became due, in alignment with cl. 39.8 of the PCBS agreement. As the arbitral tribunal has clarified in its addendum award, the imposition of interest from the date of the notice of arbitration for the post-suspension invoices was inadvertent, given that not all invoices were due at that juncture.

[66] The defendant's reliance on the AA 2005 and AIAC Rules is well-founded. The arbitral tribunal has utilised its statutory powers to amend an evident miscalculation of the date from which interest should run, thus ensuring that the award reflects the actual intent and decision of the arbitration tribunal. This action falls within the permissible scope of correction and is neither a review nor an appeal of its decision, as erroneously alleged by the plaintiff.

[67] In essence, the arbitral tribunal's decision to issue the addendum award correcting the commencement date for the calculation of interest from the date of the notice of arbitration to the factual date upon which the invoices became due under the PCBS agreement, being 30 days after a correctly rendered invoice is acknowledged, constitutes a permissible correction of an inadvertent act that is squarely within the arbitration tribunal's mandate to correct under s. 35 of the AA 2005 and art. 38 of the AIAC Rules. It does not affect the arbitration tribunal's substantive ruling on the due sums, nor does it contravene s. 36 of the AA 2005, as it is a specific provision allowed for under s. 35.

[68] The plaintiff relies on the Singapore High Court case of *Tay Eng Chuan v. United Overseas Insurance Ltd*, which delineates between permissible clerical corrections and impermissible substantive alterations. In this case, Tay Eng Chuan filed an application seeking an extension of the 28-day time limit to appeal against an arbitration award, arguing that the time should run from when he was notified of the outcome of his request to correct alleged mistakes in the award. The key issue was whether the time limit under s. 50(3) of the Arbitration Act for appealing an arbitration award should begin from the date of the original award or from when the applicant was notified of the outcome of his request to correct the award. The court decided that the time limit of 28 days ran from the date of the original award, as s. 43(1)(a) of the Arbitration Act only allowed correction of clerical or technical errors, not substantive changes to the award's findings, and there was no ambiguity in the award that would justify extending the time limit.

[69] However, upon meticulous examination of the aforementioned case and the facts at hand, this court determines that the distinction drawn by the plaintiff does not hold. In *Tay Eng Chuan*, the corrections sought were fundamentally substantive as they attempted to convert a dismissal into an allowance of claims – a clear reversal of the tribunal's decision. Contrastingly, in the present matter, the arbitral tribunal did not revise its substantive decision regarding the entitlement of the plaintiff to the post-suspension charges and the late payment interest. Instead, the arbitral tribunal rectified the commencement date for the calculation of said interest – a correction well within the realm of clerical or accidental errors as envisioned by the legislative framework.

[70] It is pivotal to acknowledge that interest, by its nature, is compensatory. It is intended to redress the loss of use of the principal sum. Therefore, the determination of the appropriate date from which interest should run is generally a secondary issue, ancillary to the principal adjudication of liability. Granting that the determination of such a date does involve an exercise of discretion, this exercise ought to be guided by the principles of fairness and the avoidance of unjust enrichment.

[71] The contention of the plaintiff that the correction constituted an error of judgment rather than a clerical mistake is not persuasive. The final award, without the correction, would result in an interest award on a non-existent amount prior to the established start date, which would be in conflict with the principles of public policy in Malaysia – a ground for setting aside an award as stipulated in s. 39(1)(b) of the AA 2005.

[72] It is evident that the arbitration tribunal, through the addendum award, sought to correct an accidental slip or omission, thus bringing the final award into alignment with the established facts and the law, rather than re-adjudicating the merits of the case. The rectification does not disturb the quantum of the final award, nor does it upset the balance of the arbitration arbitral tribunal's findings. It merely corrects the temporal aspect of the interest calculation, which appears to be a minor yet important detail to ensure the final award's coherence and compliance with legal norms.

[73] In the final analysis, I am satisfied that the addendum award represents a legitimate exercise of the arbitral tribunal's power of correction, not an impermissible review of the merits of the final award. The defendant therefore succeeds on this issue.

Plaintiff's Concession

[74] The pivotal issue in this application turns on the scope of an arbitral tribunal's power to correct errors in its award under s. 35 of the AA 2005. In this regard, it is of utmost significance that the plaintiff has itself conceded, through its reliance on *Econ Piling Pte Ltd And Another v. Shanghai Tunnel Engineering Co Ltd* [2011] 1 SLR 246, that an arbitral tribunal's power of correction extends to "mistakes arising out of miscalculations, use of wrong data in calculations, (and) omission of data in calculations".

[75] The plaintiff, in para. 15 of its submissions, quoted the following passage from *Econ Piling*:

> Such errors would include mistakes arising out of miscalculations, use of wrong data in calculations, omission of data in calculations, and clerical or typographical errors made in the course of typing or drafting the award.

[76] This was in the context of the Singapore High Court's discussion on the scope of correctable errors under a provision *in pari materia* with s. 35(1)(a) of the AA 2005. The court's observations, which the plaintiff accepts, make it abundantly clear that an arbitral tribunal's power of correction extends to "mistakes arising out of miscalculations, use of wrong data in calculations, (and) omission of data in calculations."

[77] Furthermore, in para. 17 of its submissions, the plaintiff conceded that an "error or omission of a similar nature" under s. 35(1)(a) "must reflect any kind of error where the words of an award do not reflect what the tribunal in fact decided." This was reiterated in para. 18, where the plaintiff emphasised that "what matters is whether what is recorded is what the tribunal intended."

[78] The significance of these concessions cannot be overstated. Applying the very principles acknowledged by the plaintiff to the facts of this case, it becomes evident that the arbitral tribunal's correction in the addendum award falls squarely within the scope of s. 35(1)(a).

[79] A plain reading of paras. 27 and 28 of the addendum award demonstrates that the arbitral tribunal "inadvertently overlooked" the fact that most of the post-suspension charges were not yet due as of the notice of arbitration date (27 February 2018). This caused the arbitral tribunal to erroneously use that date as the interest commencement date. However, the arbitral tribunal made it crystal clear that its actual intention was to award interest "on the due date until payment." This is consonant with the arbitral tribunal's treatment of the pre-suspension charges.

[80] In these circumstances, I have no hesitation in finding that the use of 27 February 2018 instead of the dates the post-suspension charges became due was a patent case of the wrong data being used and the correct data being omitted in the interest computation – an error that the plaintiff itself recognises as falling within an arbitral tribunal's power of correction. Far from being a review of the arbitral tribunal's decision, the addendum award sought to give effect to the arbitral tribunal's true intention by aligning the interest computation with the undisputed facts. This is the very *raison d'etre* of the correction power under s. 35(1)(a).

[81] Support for this conclusion is also found in the High Court's decision in *Lembaga Kumpulan Wang Simpanan Pekerja v. Arulananda K Manickam* [2018] 1 CLJ 88; [2017] 10 MLJ 461. In that case, Mohd Nazlan J (as he then was) recognised at [12] that a correction may be made under the slip rule in O. 20 r. 11 of the Rules of Court 2012 (which encapsulates the same principles as s. 35(1)(a)) if "the order as drafted does not correctly state what the court actually decided and intended." Whilst the learned judge found that it was unclear in that case whether the court had intended to award the payment in question, his reasoning supports the proposition that where a decision by a court or tribunal inadvertently fails to reflect its actual intention, this is precisely the type of error that the correction power is meant to address. That is exactly the situation here.

[82] Reverting to the plaintiff's concessions, I find that they are wholly inconsistent with its attempt to characterise the arbitral tribunal's correction as a mere error of judgment that is immune to correction. On the evidence, there is nothing to suggest that the arbitral tribunal made any conscious decision that interest should commence before the post-suspension charges were due. Indeed, the unambiguous language of paras. 27 and 28 of the addendum award entirely refutes such a notion. The irresistible conclusion is that this was nothing more than an inadvertent error in the computational process, not a substantive decision by the arbitral tribunal. I reiterate that the

plaintiff has itself acknowledged that errors in calculation fall within the realm of permissible corrections. It cannot now escape the consequences of its own concession.

[83] For these reasons, I find that the arbitral tribunal acted entirely within the scope of its statutory power under s. 35 of the AA 2005 in issuing the addendum award to correct an inadvertent error in the interest computation in the final award. The arbitral tribunal's correction is fully in alignment with the clear language and intent of s. 35(1)(a), as recognised by the plaintiff's own concessions and supported by the applicable judicial authorities. The plaintiff's submissions to the contrary, with respect, are untenable in light of the evidence and the legal position it has itself acknowledged.

[84] In conclusion, the arbitral tribunal's issuance of the addendum award was a proper exercise of its corrective jurisdiction and did not in any way contravene s. 36 of the AA 2005. The plaintiff's challenge to the same therefore cannot succeed. The defendant must prevail on this issue.

Ejusdem Generis And ***Noscitur A Sociis***

[85] The plaintiff has sought to invoke the interpretive canons of *ejusdem generis* and *noscitur a sociis* to argue for a restrictive reading of the phrase "other error of similar nature" in s. 35(1)(a) of the AA 2005. The plaintiff contends that this phrase must be limited to errors of "simple computation" or in "recording an award", in line with the specific categories of computational, clerical and typographical errors that precede it. Applying this narrow construction, the plaintiff submits that the arbitral tribunal's correction of the interest commencement date in the addendum award falls outside the scope of s. 35(1)(a).

[86] With respect, I am unable to accept this argument. Whilst *ejusdem generis* and *noscitur a sociis* are undoubtedly relevant principles of statutory interpretation, they cannot be applied in a manner that would unduly fetter or frustrate the legislative intent behind s. 35(1)(a).

[87] The starting point is the language of the provision itself. Section 35(1)(a) empowers an arbitral tribunal to correct "any error in computation, any clerical or typographical error or other error of similar nature". It is immediately apparent that the categories of computational, clerical and typographical errors are expressed in broad terms, without any qualifiers to limit their scope. There is simply nothing in the natural and ordinary meaning of those words to suggest that only "simple" computational errors, for example, are envisaged. If Parliament had intended to restrict the power of correction to errors of such a narrow compass, it could easily have employed language to that effect. The fact that it did not do so is a strong indicator that such a restrictive reading was not intended.

[88] This is reinforced by the inclusion of the phrase "or other error of similar nature" in s. 35(1)(a). The use of the disjunctive "or" indicates that this phrase is not merely an extension of the enumerated categories, but a distinct category in its own right. The operative word is "similar", which denotes that the nature of the error must share common features with computational, clerical and typographical errors, but not that it must be identical to those errors.

[89] The common thread that binds these errors, as recognised in cases such as *CNA v. CNB*, is that they are "errors in the nature of inadvertent acts or omissions by the arbitral tribunal, which if corrected, do not affect the substance of what the tribunal intended to decide." Notably, there is no suggestion in *CNA v. CNB* or any of the other authorities cited by the parties that computational errors are confined to those of a "simple" nature or that correctable errors are limited to those in "recording an award." Adopting such a narrow construction would not align with the substance of what the case law has recognised as being the unifying characteristic of the errors captured by s. 35(1)(a).

[90] Applying these principles to the present case, I am satisfied that the arbitral tribunal's error in awarding interest on the post-suspension charges from 27 February 2018 instead of the dates those charges became due is an "other error of similar nature" under s. 35(1)(a). As explained in my decision on the earlier issues, this was clearly an inadvertent error on the part of the arbitral tribunal. It used the wrong commencement date and thereby omitted to use the correct dates in the interest computation. This squarely falls within the realm of computational or similar errors, as contemplated by s. 35(1)(a). The fact that the correction exercise might have involved some complexity does not take it outside the scope of the provision.

[91] The plaintiff's attempt to restrictively interpret s. 35(1)(a) as being limited to "simple" computational errors or errors in "recording an award", in reliance on the *ejusdem generis* and *noscitur a sociis* principles, is thus not supported by the statutory language, the applicable case law, or the nature of the arbitral tribunal's error itself. Such an unduly narrow reading would deprive the words "other error of similar nature" of any meaningful content and fail to give effect to the legislative intent to confer a reasonable measure of latitude on arbitral tribunals to correct inadvertent errors in their awards.

[92] Furthermore, I am unable to agree with the plaintiff's submission that the Federal Court's decision in *Tenaga Nasional Bhd v. Majlis Daerah Segamat* [2022] 2 CLJ 497; [2022] 2 MLJ 119 on the application of the *ejusdem generis* and *noscitur a sociis* principles requires the court to read s. 35(1)(a) in the manner contended for by the plaintiff. In that case, the Federal Court was concerned with the wholly distinct question of whether "machinery" falls within the meaning of "land" or "building" under specific provisions of the

Local Government Act 1976. The court's decision was premised on the express statutory definitions and the legislative intent discernible therefrom. It was not concerned with the correction of arbitral awards under s. 35(1)(a) of the AA 2005, which must necessarily be interpreted on its own terms and context. Transposing the Federal Court's reasoning to the present factual and legal matrix is, with respect, an untenable leap in logic.

[93] In the round, I find that the arbitral tribunal's correction of the interest commencement date falls well within the scope of "other error of similar nature" under s. 35(1)(a) of the AA 2005. The plaintiff's effort to read into the provision restrictions that are not justified by its language, object or purpose cannot be sustained. The clear words of s. 35(1)(a) encompass the arbitral tribunal's correction. The plaintiff's submissions on the interpretation of s. 35(1)(a) and the application of *ejusdem generis* and *noscitur a sociis* must therefore be rejected. I hold that the defendant prevails on this issue.

Functus Officio

[94] The plaintiff contends that the arbitral tribunal was *functus officio* upon issuing the final award dated 3 October 2022 and therefore had no jurisdiction to subsequently alter the interest start date on the post-suspension charges in the addendum award dated 1 December 2022. The plaintiff submits that the correction made in the addendum award goes beyond the scope of the tribunal's limited post-award powers under s. 35 of the AA 2005, which are confined to correcting computational, clerical, typographical or similar errors.

[95] The defendant argues that s. 35 of the AA 2005 and art. 38 of the AIAC Rules expressly empower the arbitral tribunal to correct certain errors in its award even after the award has been issued, and that this statutory exception necessarily qualifies the *functus officio* doctrine. The defendant further submits that the tribunal's correction of the interest start date squarely falls within the ambit of an "error in computation ... or other error of similar nature" under s. 35(1)(a), and does not amount to a review of the merits of the final award.

[96] The *functus officio* doctrine, under which an arbitral tribunal's mandate comes to an end once it has rendered its final award, is well-established in arbitration law. This principle promotes finality and certainty, essential features of the arbitral process. However, as the defendant rightly points out, the doctrine is not absolute and is subject to statutorily prescribed exceptions.

[97] One such exception is found in s. 35(1)(a) of the AA 2005, which allows an arbitral tribunal to correct "any error in computation, any clerical or typographical error or other error of similar nature." Article 38 of the AIAC Rules, under which the present arbitration was conducted, contains a

similar provision. The clear intent behind these provisions is to permit the correction of inadvertent errors in the award, without disturbing the finality of the award on the substantive merits of the dispute.

[98] In so far as a correction falls properly within the scope of s. 35(1)(a), it constitutes a valid exercise of the tribunal's limited statutory power and does not offend the *functus officio* principle. The clear words of s. 35(2) empower the tribunal to make such corrections within the stipulated time frame "where the arbitral tribunal considers the request made under subs. (1) to be justified".

[99] The key question then is whether the correction made in the addendum award in this case can be characterised as an "error in computation ... or other error of similar nature" under s. 35(1)(a).

[100] On the facts, the arbitral tribunal made it patently clear in paras. 27 and 28 of the addendum award that it had "inadvertently overlooked" that the post-suspension charges were not yet due as at the notice of arbitration date of 27 February 2018, and that its actual intention was to award interest from the date the charges became due. The use of 27 February 2018 as the interest start date was plainly an oversight, as it did not reflect the tribunal's true decision that interest should run from the due date of the post-suspension charges.

[101] In these circumstances, I have no hesitation in finding that the error in the interest start date falls squarely within the realm of "error of similar nature" under s. 35(1)(a). It was an accidental slip by the tribunal, closely akin to a computational error, that had the effect of rendering the interest award in the final award inconsistent with the tribunal's manifest intention. Correcting this error did not entail any alteration of the tribunal's decision that the plaintiff was entitled to the post-suspension charges and to interest thereon.

[102] This conclusion aligns with the approach taken in cases such as *CNA v. CNB*, where corrections of inadvertent errors or omissions that do not affect the substance of the tribunal's intended decision have been found to fall within the equivalent of s. 35(1)(a). Such errors are conceptually distinct from errors of judgment or law, which cannot be corrected under this provision.

[103] The plaintiff relied on *Kelana Erat Sdn Bhd v. Niche Properties Sdn Bhd & Another Case* [2013] 4 CLJ 1172; [2012] 5 MLJ 809 to argue that the arbitral tribunal in the present case was *functus officio* after issuing the final award and therefore had no power to subsequently alter the interest start date on the post-suspension charges in the addendum award. In *Kelana Erat*, the after the award had been rendered. The plaintiff sought to draw an analogy between the request for "clarifications" in *Kelana Erat* and the correction

made by the arbitral tribunal in the addendum award in the present case. The plaintiff's reliance on *Kelana Erat* is, with respect, misplaced. That case involved a request by one party for "clarifications" of the arbitral award. The High Court held, rightly, that neither the AA 2005 nor the UNCITRAL Rules (as they then were) provided for the tribunal to issue clarifications of its award. However, the present case does not concern a request for clarification. Rather, it involves a correction of an inadvertent error in the computational process of the award, which falls within the express terms of s. 35(1)(a). The distinction is crucial.

[104] I also do not think that the *functus officio* doctrine is an impediment to the addendum award. Section 35 carves out a narrow and specific exception to *functus officio*, empowering the tribunal to correct certain defined errors. Parliament must be taken to have intended that a correction falling within the scope of this provision does not violate the general prohibition against varying or revoking an award in s. 36(2). The arbitral tribunal, in issuing the addendum award to rectify an error that it was authorised by statute to correct, acted within its proper remit and in a manner that is entirely consistent with the terms and spirit of the AA 2005.

[105] For these reasons, I find that the arbitral tribunal's issuance of the addendum award correcting the interest commencement date was a valid exercise of its statutory powers under s. 35 of the AA 2005 and did not contravene the *functus officio* principle. The plaintiff's arguments on this issue therefore cannot be sustained. The defendant must prevail on this point.

Conclusion

[106] For the reasons articulated above, I find that the arbitral tribunal acted entirely within its statutory remit under s. 35 of the AA 2005 in issuing the addendum award dated 1 December 2022 to correct an inadvertent error in the interest computation in the final award dated 3 October 2022. The correction of the interest commencement date from 27 February 2018 to 1 January 2019 squarely falls within the scope of "error in computation ... or other error of similar nature" under s. 35(1)(a), as it rectifies an accidental slip that had caused the final award to inaccurately reflect the arbitral tribunal's true intention to award interest on the post-suspension charges from the date they became due.

[107] The Arbitral Tribunal's power to make such a correction is reinforced by the clear language of s. 35, the corresponding provisions in the AIAC Rules, and persuasive judicial authority interpreting similar statutory provisions. Notably, the plaintiff's own concessions on the scope of permissible corrections under s. 35(1)(a), as evinced by its reliance on *Econ Piling Pte Ltd And Another v. Shanghai Tunnel Engineering Co Ltd* (*supra*), undermine its present attempt to characterise the arbitral tribunal's correction as a mere error of judgment immune to correction.

[108] Furthermore, I do not find the plaintiff's arguments on the proper interpretation of s. 35(1)(a), the application of the *functus officio* doctrine, or the invocation of the *ejusdem generis* and *noscitur a sociis* principles to be sustainable. The arbitral tribunal's correction in the addendum award does not constitute a review of the merits of the final award and is not precluded by the *functus officio* doctrine, as it falls within the specific statutory exception carved out by s. 35. The language of s. 35(1)(a) also cannot bear the unduly narrow construction contended for by the plaintiff, whether based on *ejusdem generis* and *noscitur a sociis* or otherwise.

[109] In the final analysis, the addendum award represents a legitimate exercise of the arbitral tribunal's corrective jurisdiction under s. 35 of the AA 2005, not an impermissible variation or review of the final award that contravenes s. 36. It gives effect to the arbitral tribunal's manifest intention by bringing the interest computation into alignment with the undisputed facts, without altering the substance of the arbitral tribunal's decision on the plaintiff's entitlement to the post-suspension charges and interest thereon.

[110] Accordingly, the plaintiff's originating summons to set aside the addendum award is dismissed with costs of RM10,000 to be paid by the plaintiff to the defendant (subject to the allocatur). The defendant has succeeded in demonstrating that the addendum award was issued pursuant to the arbitral tribunal's statutory powers of correction and is not liable to be set aside.